D.B. INCOME TAX REFERENCE NO.57/1998
(Commissioner of Income Tax Vs. M/s.
Aravali Minerals & Chemicals India (P) Ltd.)

Date of order : 13.10.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. K.K. Bissa, for the appellant.
Mr. Dinesh Mehta, for the respondent.

Heard learned counsel for the parties.

Following questions of law have been referred by the Tribunal for assessment year 1990-91 :

1. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was justified in claiming higher depreciation on account of re-valuation of fixed assets, inspite of the fact that the assessee has not brought out any justified purpose for re-valuation of assets even before the Tribunal.

2. Whether the Tribunal was justified in holding that the guide-lines issued by the Institute of Chartered Accountants of India should be followed inspite of the fact that the Hon'ble Karnataka High Court in the case of CIT vs. Cap Steel Ltd., 162 ITR 533 has held that the assessee cannot be given the advantage of the principle recommended by the Institute if it is contrary to the statutory provisions."

The questions framed do not bring out pointedly the controversy that arise for consideration in this reference and need to be re-framed in the light of facts and circumstances of the case as under:

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that for the purposes of applying Section 115J of the Act to a company, recomputation of depreciation by rejecting the revalued book value of assets is not permissble to increase the book profits shown in the audited book of accounts."

The facts emerging from the statement of the case and the orders annexed there with are that the assessee is a private limited company and filed a return of a loss of Rs.1,25,860/-. The assessment under Section 143 (3) was completed and the total income of the assessee as per the return was computed as Nil after setting off earlier years' business loss/depreciation.

However, the assessee being a Company, the assessing officer resorted to Section 115J for levying minimum tax as per the book profits shown in its audited books of accounts for the purpose of declaring dividends.

While considering the book profits, the assessing officer re-computed the book profits and in doing so, he re-computed the depreciation by disallowing the re-valuation of the assets shown in the books of accounts. Though the audited accounts of the assessee company had shown the loss of Rs.28,986/-, by recomputing the depreciation and

disallowing, the amount of depreciation which according to the assessing officer was wrongly accounted for and recomputed book profits at profit of Rs.1,43,538/- and levied tax on 30% thereof by considering it to be the taxable income of the assessee for the assessment year in question in terms of Section 115J of the Act.

The assessee challenged the order of the assessing officer, recomputing the books of profits and reaching it to a different figure by contending that the depreciation as appearing in the audited books of company could not have been altered by the assessing officer while resorting to Section 115 J.

The CIT (Appeals) upheld the assessment order in this regard while granting other reliefs with which we are not concerned in this reference.

The Tribunal upheld the contention of the assessee and set aside the assessment order by resorting to Section 115J. Hence the aforesaid two questions have been referred.

The assessment relates to Section 115J of the Act of 1961, the provisions contained under that Section governs the present case. As noticed above the profits of a Company under Section 115J can be basis of assessment only if the total income of a

Company computed in accordance with the provisions of the Act is less then 30% of its book profits. In that event, the total income of such assessee-company chargeable to the tax for the relevant previous period shall be deemed to be an amount equal to the 30% its book profit. Sub-section 1A defines what is to be book profit for the purpose of assessment under Section 115J. It means, the net profit as shown by the Company in the P&L account for the relevant previous period prepared in accordance with the provisions of Part II and III of Schedule VI of the Companies Act, 1956. The Explanation appended to Section 115J (1A) also provides what adjustments are permissible to be made in book profit declared as per Profit & Loss Account of the Company.

The ground on which the book profits of the Company, which has been re-computed by the assessing Officer, was by way of re-determining the depreciation claimed by the assessee because the assessing officer was of the opinion that the re-valuation of the assets in the books of Company for the purposes of computing its book profit was not permissible and depreciation ought to have been on the basis of written down value before revaluation of the assets.

Firstly, Explanation to Section 115J (1A) clearly enumerates the adjustments which can be made in the net profit disclosed in the P&L account of the

relevant previous period. No other adjustments are permissible to be made for the purpose of resorting to minimum level of tax on admitted profits. Re-computing of depreciation charged to the P&L account of the Company are not included in the enumerated adjustments.

Moreover, Part II and III of Schedule VI of the Companies Act reffered to in sub-section 1A of Section 115J do not prohibit the re-valuation of the book assets of the Company for the purposes of charging depreciation to the P&L account. Sub-para IV of Para III of Part II requires that the P&L account, setting out the other items relating to the income and expenditure of the Company arranged under the most convenient heads; and in particular, shall disclose the amount provided for depreciation, renewals or diminution in value of fixed assets. Para-7 of Part III also envisages that for the purpose of Parts I and II of this Schedule, unless the context otherwise requires the expression “provision” shall, subject to sub-clause (2) of this Clause, mean any amount written off or retained for providing depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability, of which the amount cannot be determined with substantial accuracy.

Significantly, sub-para (2) of Para 7 of Part III leaves it to the Directors to consider whether the

provision by way of depreciation, renewals or diminution in value of assets is excessive or not. It unequivocally provides that where any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act is in excess of the amount, which in the opinion of the directors is reasonably necessary for the purpose the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision. Therefore, increase and decrease by way of providing depreciation, renewals or diminution in value of assets in the P&L account and its reasonableness is within the domain of decision by the Directors and that decision is not liable to be questioned while considering the book profits for the purposes of finding out the 30% of such book profit to be compared with the total income assessed in accordance with the provisions of the Act on the basis of the return submitted by the assessee company. There is no room for Income Tax Officer to meddle with the provision of the depreciation provided in the P&L account by re-valuing the assets which has been approved by the Director as well as Annual General meeting in terms of Section 210 of the Companies Act.

Significantly, under Section 115JA which applies to the assessment year 1997-98 onwards until

assessment year 2000-01 while requiring that every assessee being a company shall for the purposes of this Section prepare its P&L account for the relevant previous year for the purpose of Parts II and III of Schedule VI of the Companies Act and considering the net profits as shown in the P&L account for the relevant previous year, prepared as aforesaid as book profit for the purpose of Section 115J (1A) clarified that while preparing P&L account, the depreciation shall be calculated on the basis of same method and rate which has been adopted for calculating the depreciation for the purpose of preparing the P&L account laid before the Company in its annual general meeting in accordance with the provisions of Section 210 of the Companies Act.

This provision clearly put the question of providing depreciation on the assets of the Company whether on its increased or decreased value beyond the pale of exercise by Assessing Officer. Therefore, depreciation approved by and P&L account approved by its Directors at Annual General Meeting is not liable to be tempered with by the assessing officer for the purposes of levying minimum level of tax under Section 115J and 115JA which has limited object of holding, the assessee falling under Section 115J and 115JA, liable to pay minimum tax at the level of admitted profits by them through their P&L account. While having recourse to Section 115J, the assessing officer

is not empowered to embark on enquiring into P&L account of the Company by invoking its power for computing its total income in accordance with the provisions of this Act. The only permitted adjustment having been identified under Explanation to Section 115J no other adjustment in the book profit or to say in profit disclosed in the P&L account is permissible to be made by resorting to one or another principle.

Apparently, under various heads stated in Clause (a) to (ha) of Explanation to sub-section (1) of Section 115J does not permit the assessing officer to inter-meddle with the depreciation provided in the books of accounts for the purposes of arriving at book profits different than from what has been stated in the audited books of accounts for the purposes of presenting before Annual General Meeting under Section 210 of the Companies Act in order to declare dividend. Section 115 J is to provide a minimum tax liability on the admitted profits for the purpose of distribution of dividends and it is not to be substituted by re-computing the Profit and Loss Accounts on general principles. Only such adjustments are permissible as permitted in Explanation.

This Court had occasion to consider the scope of computation of the book profits by the Assessing Officer while resorting to levy minimum tax under Section 115-S in Rajasthan Spinning & Weaving Mills

Vs. DCIT, decided on 21.7.2005 (DB I.T. Appeal No.1/2003). This was a case in which the assessing officer while resorting to procedure under Section 115J had recomputed the depreciation shown in the books of account by the assessee by taking upon himself the exercise to find out what should be the correct and true basis to claim to depreciation for working out book profit through P&L Account. This contention was negatived by the Court after considering the relevant provisions of the Income Tax Act, the Companies Act and the precedents, the Court held as under :-

> "It may be noticed that Section 115J is to be resorted to in alternative to a regular assessment by computing taxable income of a Company in accordance with the provisions of the Income Tax Act. It is only where the result arrived at by regular assessment of the company by computing its income in accordance with the provisions of Income Tax Act, if the Assessee's total taxable income to be less than the 30% of the income admitted by the assessee through declaration of Book Profits in its Profit and Loss Account presented before the A.G.M. for the purpose of distributing the dividends. This is with the object that the Company is at least held liable to pay tax on 30% of such admitted profits, which has been placed before A.G.M. for the purpose of distributing its dividends. The object of insertion of Section 115J initially w.e.f. 1.4.1988 by Income Tax Act, 1961 and later on by introducing Section 115J-A w.e.f. 1.4.1997 vide Finance Act, 1996 was to secure minimum Tax on the basis of admitted profits earned by the Company for the purpose of distributing the dividends if the computation of income in accordance with the provisions of Income Tax Act yields lesser income. The provision was thus not introduced as an alternate

> regular procedure to be gone into for determining the maximum tax to be collected from the Company, but it was the procedure provided in alternative to ensue that minimum tax is paid by the Company on its book profits as admitted by it before distributing the dividends to its share holders."

In the aforesaid decision, the Court further held as follows :

> "That there is no room for re-determining the net profit as shown in the Profit and Loss Account of the Company containing relevant declarations as incorporated in the light of Part III of Schedule VI. The Assessing Officer had to accept the result shown in the Profit and Loss Account as book profit subject to the adjustment by additions or reductions, as detailed in Explanation. The enquiry by the Assessing Officer into the conceptual "true and fair result" of the working of the Company to be adverted to by the Tribunal is alien to enquiry under Section 115J. As such it is not a substitute procedure laid down for re-computing the income of the assessee in different manner by the Assessing Officer himself, as he thinks proper, then he has already computed under the provisions of the Income Tax Act. He is not required to embark upon the detail requirement into the different aspects of the matter and re-compute the net profit shown in the books of Accounts for applying basis to revive as Book Profit which he thinks ought to be fair and true result by resorting to conceptual theory of true and fair result, by foraying into various other provisions of the Companies Act, that may provide many other matters to be taken into account for various other purposes."

The principle is no more res-integra inasmuch the Supreme Court has considered the scope of assessing officer's authority in re-determining the

net-profit disclosed in the P&L account of a company which have been audited and duly approved by AGM in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, reported in (2002) 255 ITR 273. In this case, the appellant assessee company while determining its net profit for the relevant accounting year has provided for arrears of depreciation in its Profit and Loss Accounts. According to the Revenue, this claim was not in accordance with Parts II and III of Schedule VI of the Companies Act and the same was added to the book profits shown by the assessee. Allowing the assessee's appeal, the Supreme Court held that the Assessing Officer has no authority to reopen the accounts of a company which is certified by the auditors of the company as having been maintained in accordance with the provisions of the Companies Act and which account has been accepted in the general meeting of the company as well as by the Registrar of Companies.

In view of aforesaid decision, the Tribunal was justified in coming to the conclusion that the assessing officer could not have re-computed the book profit by discarding the re-valuation of the assets for the purpose of arriving at books profits other than which has been presented before the A.G.M. for declaration of dividend as per the audited accounts.

Accordingly, we answer the question re-framed

by us in affirmative that is to say in favour of the assessee and against the revenue. No costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

arun